IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

CRL.A.No. 1943 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRLP.377/2006 Dated 02/08/2006
CC.298/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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APPELLANT: COMPLAINANT

V.V.LALITHA, W/O.BALAKRISHNAN,
CHILANKILIYATH HOUSE, P.O.THANGANLOOR,
THRISSUR, REP. ON BEHALF OF AVANUR MILK CO-OP.
SOCIETY, AVANUR.

BY ADV. SRI.K.N.PADMAKUMAR

RESPONDENTS: ACCUSED AND STATE

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1. SILK EMPLOYEES WELFARE SOCIETY,
P.O.ATHANI, THRISSUR,
REP. BY ITS SECRETARY V.BABU,
PLOT NO.15/8, SILK NAGAR, P.O.PERINGANDUR,
THRISSUR.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1943 of 2006

Dated this the 13th February, 2007.

J U D G M E N T

The appellant had preferred this appeal, after obtaining leave of this Court, as the complaint filed by her, before the Judicial First Class Magistrate Court-I, Thrissur, had been dismissed, under Section 256(1) Cr.P.C., due to her absence before the court below. It is claimed by the counsel appearing for the appellant that the complainant is a Secretary of a local Co-operative Society. Because of dishonour of a cheque, the above complaint had been preferred under Section 138 of the Negotiable Instruments Act, the first respondent, accused, also being a society.

2. Counsel for the appellant further submits that the appellant was always present before the court below. But, on the appointed day, she could not be present, as she was sick. There is no corroborative document produced to show that she was sick on the appointed day. Similarly, there is no material before me to show that she was present on all earlier postings, and she could not be present on the appointed day of posting.

3. Though the service is complete in respect of the first respondent, accused, there is no representation. Hence, I heard the learned counsel appearing for the appellant. Although I am not able to accept the contentions raised before me, by the learned counsel for the appellant, complainant, as there being no opposition and no appearance from the first respondent, accused, I give an opportunity to both sides to raise their contentions before the court below.

4. In the result, the appeal is allowed. The impugned order, dated 1.6.2006, is set aside. C.C.No. 298/2005 is restored to the file of the Judicial First Class Magistrate Court-I, Thrissur.

5. The parties shall appear before the court below on 20.3.2007.

6. The learned Magistrate shall dispose of the complaint, as expeditiously as possible, and in any case, within three months from the date of appearance of the parties.

J.M. JAMES,
JUDGE

nj.